

HOUSE No. 3079

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to update the bottle deposit system and lower the cost of recycling beverage containers in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Colleen M. Garry	36th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO UPDATE THE BOTTLE DEPOSIT SYSTEM AND LOWER THE COST OF RECYCLING BEVERAGE CONTAINERS IN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. PURPOSE: An economically sound and environmentally safe solid waste management
2 strategy includes components of conservation, source reduction, reuse, recycling and litter control. In
3 order to stimulate the construction of an appropriate infrastructure in an integrated system of solid waste
4 management, business and government must engage in cooperative participation to accomplish these
5 goals. The following statutory changes are necessary in order to stimulate the creation of an appropriate
6 solid waste management infrastructure: expanded access and participation to comprehensive recycling
7 programs, development of comprehensive litter abatement programs, analysis and expansion of markets
8 for recyclable materials, and facilitation of expanded residential and commercial recycling throughout the
9 Commonwealth.

10 SECTION 2. Chapter 21A of the General Laws, as appearing in the 2006 Official Edition, is hereby
11 amended by inserting after Section 18A the following new section:—

12 Section 18B. The Secretary shall establish a program to determine the use of recyclable materials in the
13 Commonwealth. Such program shall include, but not be limited to, a method for determining the
14 percentage of recyclable material that is actually reused rather than discarded. The Secretary shall file a
15 report on the program annually with the Joint Committee on Natural Resources and Agriculture, the Joint
16 Committee on Energy, and the House and Senate Committees on Ways and Means on or before
17 December thirty-first of each year. The report shall contain, but not be limited to, information concerning
18 statewide use of recycled material in the Commonwealth.

19 SECTION 3. Chapter 21H of the General Laws, as appearing in the 2006 Official Edition, is hereby
20 amended by inserting after Section 7 the following new section:—

21 Section 7A. The Department shall establish a program to increase recycling opportunities at public
22 facilities visited by at least five thousand individuals annually, including but not limited to, stadiums,
23 arenas, marinas, airports, theatres, and pedestrian walkways. The Department shall work with MassPort,
24 the Massachusetts Cultural Council, the State Racing Commission, the Bureau of State Office Buildings,
25 WasteCap of Massachusetts, and other entities in order to establish a program. The Department shall file

a report on the program annually with the Joint Committee on Natural Resources and Agriculture, the Joint Committee on Energy, and the House and Senate Committees on Ways and Means on or before December thirty-first of each year. The report shall contain, but not be limited to, activities promoting recycling at public facilities visited by at least five thousand individuals annually.

SECTION 4. Section 33 of Chapter 92 of the General Laws, as appearing in the 2006 Official Edition is hereby amended by inserting after the first paragraph the following new paragraph:—

The Commission shall include the development of recycling opportunities in all new designs and redesigns of reservations.

SECTION 5. Section 33 of Chapter 92 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the second paragraph the following new paragraph:—

The Commission shall establish a program to increase recycling opportunities in all public reservations located within the metropolitan parks district. The Commission shall file a report on the program annually with the Joint Committee on Natural Resources and Agriculture, the Joint Committee on Energy, and the House and Senate Committees on Ways and Means on or before December thirty-first of each year. The report shall contain, but not be limited to, activities promoting recycling in all public reservations within the metropolitan parks district.

SECTION 6. Effective July 1, 2009, Chapter 94 of the General Laws is hereby amended by inserting a new section 323F:—

Section 323F. Clean Environment Fund.

(a) There shall be established on the books of the Commonwealth a separate fund to be known as the Clean Environment Fund (the “Fund”). Amounts deposited in said fund shall be used, subject to appropriation, for programs described in paragraphs (c) through (f) of this section.

(b) The Fund shall be governed by the Solid Waste Management Board (the “Board”). The members of the Board shall consist of eleven persons appointed by the Governor, each of whom shall be represented by the following: the Secretary of Environmental Affairs, five representatives from the various segments of business and industry being assessed pursuant to Section 323G of Chapter 94 (beverage container manufacturer, wholesaler/distributor, and dealer), two representatives of the solid waste management and recycling industries, two representatives of statewide environmental organizations, and one representative of organized labor.

(c) Not more than sixty-five percent of amounts deposited in the Fund shall be used for recycling collection programs including, but not limited to, municipal performance-based incentive grants; unit-based pricing programs; municipal grants for recycling equipment and technical assistance; private sector grants to qualified redemption centers in order to develop innovative materials collection operations; and recycling media and education campaigns.

(d) Not more than fifteen percent of amounts deposited in the Fund shall be used for recycling market development programs including, but not limited to, the recycling loan fund for small recycling businesses; demonstration projects to process and manufacture recycled products; recycled product purchasing by state agencies; municipal buy recycled programs; and expanded source reduction initiatives.

(e) Not more than twenty percent of amounts deposited in the fund shall be used for litter prevention and removal programs including, but not limited to, a state grant program for litter pickup and removal; litter education programs for the public and for schools; research relating to litter control; and enforcement of litter related laws in state/municipal-owned places and areas that are accessible to the public.

(f) The amounts deposited in the Fund shall be used to promote and expand waste diversion programs in the Commonwealth. This shall include, but not be limited to, enhancing capabilities to recycle beverage containers in residential and commercial programs, improving access to comprehensive recycling and composting programs, providing technical assistance to residential and commercial recycling and composting programs, promoting reduction efforts, improving markets for diverted material, and other such programs as determined by the Board. The Fund shall also support comprehensive litter prevention and control measures including, at a minimum, a statewide litter education and prevention campaign, promotion of voluntary and public/private partnerships for litter control, and coordination of existing litter programs in the state.

Subject to the approval of the Board, the Department of Environmental Protection shall develop model municipal litter prevention and control programs. Monies distributed from the Fund, to eligible municipalities, shall be used solely to supplement litter pickup and removal activities. To be eligible for a grant under this section, a municipality must certify to the department the adoption of at least one of the model programs.

A sum of not less than \$250,000 shall be allocated to WasteCap of Massachusetts on an annual basis for developing programs that shall include, but are not limited to, enhancing the ability of existing Massachusetts' manufacturers to utilize and process recovered materials; assisting businesses and technologies in the Commonwealth; identifying support needs (i.e., research and technical assistance); and addressing waste reduction and recycling issues confronted by businesses (i.e., Awareness Campaigns, Business Recycling Cooperatives, Buy Recycled Programs).

(g) The Board shall submit to the Secretary of Administration and Finance, the House and Senate Committees on Ways and Means, the Joint Committee on Energy, and the Joint Committee on Natural Resources and Agriculture an annual report of its activities and an evaluation of any and all programs entered into during the course of the fiscal year.

SECTION 7. Section 323F of Chapter 94 is hereby amended by adding the following new section:—

323G. Assessment.

Between January 1, 2012 and December 31, 2012 an amount not to exceed five million six hundred thousand dollars (\$5,600,000) shall be deposited into said Fund based on assessments levied by the Commissioner of Revenue ("Commissioner") as follows:

(a) Distributors/wholesalers shall contribute the sum of five million two hundred sixty-four thousand dollars (\$5,264,000). The Commissioner shall compute the assessment for each distributor/wholesaler of these beverages based on the distributor/wholesaler's pro-rated share of the total number of beverage containers sold within the state between January 1, 2010 and December 31, 2010. The Commissioner shall undertake the necessary steps to obtain beverage container sales information for this period, shall treat the information as confidential, and, by June 30, 2011, shall compute each distributor/wholesaler's assessment and notify each distributor/wholesaler of his assessment.

(b) Beverage container manufacturers shall contribute the sum of two hundred eighty thousand dollars (\$280,000). After consultation with the Can Manufacturers Institute, Glass Packaging Institute, American

Plastics Council, and the Steel Recycling Institute, the Board shall file a report with the Commissioner, no later than June 30, 2009, detailing the assessment on beverage container manufacturers.

(c) Dealers shall contribute the sum of fifty-six thousand dollars (\$56,000). This assessment shall be in addition to any liability of dealers who may also be subject to assessments as distributor/wholesalers under paragraph (a). After consultation with the Massachusetts Food Association and the Massachusetts Package Store Association, the Board shall file a report with the Commissioner, no later than June 30, 2011, detailing the assessment on dealers.

SECTION 8. The effective date of Sections 10 through 19 is January 1, 2012.

SECTION 9. Chapter 94 of the General Laws as appearing in the 2006 Official Edition, is hereby amended by striking section three hundred and twenty-one and replacing it with the following new section:—

Section 321. DEFINITIONS. The following definitions shall, unless the context clearly requires otherwise, have the following meaning:

“Beverage,” carbonated, noncarbonated-alcoholic and noncarbonated-nonalcoholic drinks intended for human consumption except milk and dairy derived products, infant formula, or medical food.

“Beverage container,” any sealable bottle, can, jar, or carton, which is primarily composed of glass, metal, plastic or any combination of those materials and is produced for purpose of containing a beverage. This definition shall not include containers made of biodegradable material.

“Beverage container manufacturer,” any person who engages in the manufacture or fabrication of beverage containers.

“Carbonated beverage,” soda water or similar carbonated soft drinks, mineral water, and beer and other malt beverages intended for human consumption.

“Dealer,” any person including any operator of a vending machine who sells, offers to sell or engages in the sale of beverages in beverage containers to consumers in the state.

“Distributor/wholesaler,” any person who engages in the sale of beverages in beverage containers directly to dealers in the state, including any manufacturer who engages in such sales.

“Infant formula,” any liquid food described or sold as an alternative for human milk for the feeding of infants.

“Manufacturer,” any person who bottles, cans, or otherwise places beverages in beverage containers for sale to a distributor/wholesaler or dealer.

“Medical food,” a food or beverage that is formulated to be consumed, or administered enterally under the supervision of a physician, and that is intended for specific dietary management of diseases or health conditions for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. A “medical food” is a specially formulated and processed product, for the partial or exclusive feeding of a patient by means of oral intake or enteral feeding by tube, and is not a naturally occurring foodstuff used in its natural state. “Medical food” includes any product that meets the definition of “medical food” in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.360ee (b)(3)).

144 “Noncarbonated-alcoholic beverage,” any liquid intended for human consumption and containing one-
145 half of one percent or more of alcohol by volume at sixty degrees Fahrenheit, including wine and wine-
146 based drinks, spirits and spirit-based drinks and hard cider.

147 “Noncarbonated-nonalcoholic beverage,” fruit and vegetable juice, still water, iced tea, sports drinks and
148 other noncarbonated drinks intended for human consumption, except for milk and dairy derived products,
149 infant formula, or medical food.

150 “Sales within the state,” within the exterior limits of the state of Massachusetts and includes all territory
151 within these limits owned by or ceded to the United States of America.

152 SECTION 10. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
153 amended by striking section three hundred and twenty-two.

154 SECTION 11. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
155 amended by striking section three hundred and twenty-three.

156 SECTION 12. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
157 amended by striking section three hundred and twenty-three B.

158 SECTION 13. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
159 amended by striking section three hundred and twenty-three C and replacing it with the following new
160 section:—

161 Section 323C. Abandoned deposit amounts; determination.

162 Any amounts that are or should be in a bottler’s or distributor’s Deposit Transaction Fund and that are in
163 excess of the sum of (a) income earned on amounts in said account and (b) the total amount of refund
164 values received by said bottler or distributor for non-reusable beverage containers shall be deemed to
165 constitute abandoned deposit amounts. Income earned on said fund may be transferred from said fund for
166 use as funds of the bottler or distributor.

167 SECTION 14. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
168 amended by striking section three hundred and twenty-three D and replacing it with the following new
169 section:—

170 Section 323D. Transfer of abandoned deposit amounts.

171 Each bottler or distributor shall turn over to the commissioner of revenue any deposit amounts deemed to
172 be abandoned, pursuant to section three hundred and twenty-three C. Such amounts may be paid from the
173 Deposit Transaction Fund. Amounts collected by the commissioner of revenue pursuant to this section
174 shall be deposited into the Clean Environment Fund, established pursuant to section three hundred and
175 twenty-three F.

176 SECTION 15. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition is amended by
177 striking section three hundred and twenty-three E.

178 SECTION 16. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby
179 amended by striking section three hundred and twenty-five.

SECTION 17. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking section three hundred and twenty-six and replacing it with the following section:—

Section 326. Administration; rules and regulations.

The secretary of environmental affairs shall administer the provisions of sections three hundred and twenty-one, three hundred and twenty-three F, and three hundred and twenty-four. Said secretary shall promulgate and from time to time revise rules and regulations to effectuate the purposes of said sections.

The commissioner of revenue shall administer the provisions of sections three hundred and twenty-three C, three hundred and twenty-three D, and three hundred and twenty-three G. The collection of revenues pursuant to sections three hundred and twenty-three D and three hundred and twenty-three G by said commissioner shall, to the extent consistent with this chapter, be governed by the provisions of chapter sixty-two C.

The commissioner of revenue shall promulgate and from time to time revise rules and regulations to effectuate the purposes of said sections. Said rules and regulations shall include a provision to permit manufacturers, wholesalers, distributors and retailers to borrow, without any interest charge, against their deposit transaction funds subject to such terms and conditions as the commissioner deems appropriate.

Said secretary shall determine through rules and regulations which plastic bottles and rigid plastic containers may be exempt from the labeling requirements of section three hundred and twenty-three A, including but not limited to the following: (1) readily identifiable plastic bottles and rigid plastic containers; (2) plastic bottles and rigid plastic containers for which there is no technological capability for recycling, reclamation or reuse; and (3) plastic bottles and rigid plastic containers for which recycling, reclamation or reuse is not economically feasible.

SECTION 18. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking section three hundred and twenty-seven and replacing it with the following section:—

Section 327. Enforcement; penalty; interest.

The attorney general and district attorneys shall enforce the provisions of sections three hundred and twenty-one to three hundred and twenty-seven, inclusive. Any manufacturer, wholesaler, distributor, or retailer who knowingly violates any provisions of sections three hundred and twenty-one to three hundred and twenty-six, inclusive, shall be subject to a civil penalty for each violation of not more than one thousand dollars.

Any manufacturer, wholesaler, distributor or retailer failing to make full and timely payments as required by section three hundred and twenty-three G shall pay interest on any unpaid amounts at the rate of one and one-half percent for each month or part thereof until payment is made in full.

SECTION 19. The Department of Environmental Protection shall conduct a study pertaining to existing so-called single stream recycling programs within the commonwealth. The study shall evaluate actual costs of these several programs, and actual saving experiences by these communities in which they operate when compared to multi-stream systems utilized by other local governments.

217 The Department of Environmental Protection shall report its findings to the Legislature's Joint Committee
218 on Utilities, Telecommunications and Energy, including recommendations for encouraging and expanding
219 so called single stream recycling programs throughout the commonwealth.